

WETLANDS COUNCIL

MINUTES

February 8, 2011

The Wetlands Council met on Tuesday, January 11, 2011, 112, 113, & 114 at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Sharon Champagne, Ryan Crosbie, Carol Henderson, Dari Sassan, Russ St. Pierre, Seth Prescott, and David Thompson

Absentees: Councilors: Larry Ballin and Thomas Sloan

Also present were: Amy Samson, Council Appeals Clerk and Carolyn Guerdet, Council Clerk.

The regular Wetlands Council meeting was called to order by Chairman Kimball at 9:00 a.m. with introductions and a quorum present.

1. Approval of Minutes

- *Councilor Thompson made a motion to approve the December 14, 2010 minutes, second by Councilor Champagne. Motion passed unanimously with Carol Henderson abstaining.*
- *Councilor Henderson made a motion to approve, with changes noted, the minutes of January 11, 2011, second by Councilor Thompson. Motion passed unanimously.*

3. Wetlands Bureau Update

Collis Adams, Administrator

Rulemaking - still finishing Prime Wetlands Rules for Timber Harvesting and other activities within prime wetlands and the 100' prime wetland buffer. Another meeting is being held with hopes of drafting the final set of rules and bringing to the Wetlands Council in March.

Permitting/Processing applications - currently 45 days for wetlands permits, 15 days for shoreland applications and variances under the shoreland are 45 days.

Staffing – Sandy Crystall has been transferred to the Watershed Management Bureaus so now no education and outreach for the wetlands bureau. Staff shifting has helped the program to now be in the black.

The wetlands plan has been submitted to EPA and received a glowing report. This will be used to work to secure a long-term federal funding grant.

Legislation – Collis then reviewed the list of House and Senate bills that would affect the wetlands bureau.

2. Status of Appeals

Amy Sampson, Appeals Clerk

I. New Appeals

Docket No. 10-17 WtC – Sunset Ranch Camp, Inc.

Subject: Decision on Shoreland Permit Application, Wetlands File No. 2010-00690

Status: The appellant has until March 8, 2011 Council meeting to correct the appeal.

II. Decisions that need to be written/finalized and issued.

Docket No. 06-11 WtC - Dennis Proulx

Subject: 07/13/06 Decision on Reconsideration Denial, Wetlands File No. 2006-00769

Presiding Officer: Larry Morse

Status: Council granted the Assented-To Motion to Dismiss. A decision and order needs to be finalized.

Docket No. 08-01 WtC – Newington Conservation Commission

Subject: December 3, 2007 Declining to terminate the processing of Alteration of Terrain permit application for property within the boundaries of the Pease Development Authority. Wetlands File No. 2007-0829-01

Recused: Larry Morse

Status/Action: A decision and order has been drafted; Council to review and decide on whether or not to approve.

- ***Councilor Thompson made a motion to adopt the Decision and Order, second by Councilor Sassan. Motion passed unanimously.***

Docket No. 08-04 WtC - Porter Trust

Subject: 12/12/07 Decision on Reconsideration, Wetlands File No. 2006-02705

Presiding Officer: Chip Kimball (assigned by AGO on January 5, 2011)

Status: A Motion hearing was held on January 11, 2011 at 10:00 a.m. Deliberation was tabled until April 12, 2011.

III. Hearings or PHCs scheduled.

Docket No. 07-09 WtC - Derry Conservation Commission

Subject: 4/24/07 Decision on Reconsideration Denial, Wetlands File No. 2006-00773

Presiding Officer: Seth Prescott (assigned by AGO)

Status: The Appellant's representative plans on filing a Motion for Clarification regarding the scope of evidence the Council is allowed to consider on January 14, 2011. Any objections by the other parties will be filed by January 24, 2011. The PHC has been continued to March 11, 2011 at 1:00 p.m. An appeal hearing will be held on May 10, 2011.

Action: On January 18, 2011, Atty. Whitley filed a Joint Motion Seeking Clarification of the Scope of Wetlands Council Hearing. On January 19, 2011, Atty. Lee filed the Appellants Supplement to Joint Motion Seeking Clarification. The Council will review today after the Exeter deliberation.

Docket No. 09-01 WtC - Kevin Price d/b/a Ossipee Lake Marina

Subject: 12/9/08 Administrative Order

Presiding Officer: Larry Morse (assigned by AGO on October 27, 2010)

Status: The parties are close to a settlement agreement and assented to a continuance of the hearing. The hearing is now scheduled for March 8, 2011

Docket No. 09-07 WtC and 09-08 WtC - Lake Sunapee Protective Association (LSPA) and Town of Newbury

Subject: 1/7/09 Shoreland Impact Permit issued by DES to the NH Fish and Game for the Wild Goose Site in Newbury.

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: A hearing was held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. The parties have filed Findings of Fact and Conclusion of Law. The Council will need to review the information received and schedule a date for deliberations (see handouts).

Presiding Officer Morse stated there is an opportunity for responses from the parties to what has been submitted. Following that Councilor Morse will work on the rulings of law and set a schedule for deliberation.

Docket No. 9-25 WtC - Town of Hooksett

Subject: 5/11/09 Wetlands and Non-Site Specific Permit, Permit No. 2008-02016

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Recused: Larry Morse

Status: A hearing is scheduled for March 22, 2011 at 9:00 a.m. (No business meeting.)

Docket No. 09-35 WtC – Town of Newbury

Subject: 9/18/09 Decision on Reconsideration, Wetlands File No. 2008-02781

Presiding Officer: Larry Morse (assigned by AGO)

Recused: Larry Ballin, Carol Henderson

Status/Action: A hearing was held on October 12, 2010; October 26, 2010; November 9, 2010; and December 14, 2010. The parties will be filing Findings of Fact and Conclusion of Law by January 17, 2011. The Council will need to review the information received and schedule a date for deliberations.

Docket No. 09-44 WtC – Thomas and Joan DiPace

Subject: 10/13/09 Administrative Order No. 09-082 WD

Presiding Officer: Chip Kimball (assigned by AGO on October 27, 2010)

Status/Action: A PHC was held on January 26, 2011 at 10:00 a.m. A hearing is scheduled for May 10, 2011 at 9:00 a.m. Please note that the regular business meeting will start at 8:00 a.m. The hearing may need to be rescheduled for June.

Docket No. 10-03 WtC – Richard and Donna Mills Appeal

Subject: 1/5/10 Decision on Reconsideration, Wetlands File No. 2009-01534

Status: PHC is scheduled for February 23, 2011 at 9:00 a.m.

Docket No. 10-04 WtC – Thomas J. Murray Appeal

Subject: 12/28/09 Denial of Application, Wetlands File No. 2007-00187

Presiding Officer: ~~Larry Morse~~ Chip Kimball (assigned by AGO on October 27, 2010)

Status: A 2nd PHC was held on October 27, 2010 at 9:00 a.m. The parties requested additional time to review the amended plan. A 3rd PHC is scheduled for February 23, 2011 at 3:00 p.m.

Docket No. 10-08 WtC – Robert Reich

Subject: 4/19/10 Decision on Reconsideration, Wetlands File No. 2009-02050

Status: PHC is scheduled for February 23, 2011 at 10:30 a.m.

Docket No. 10-10 WtC – Donald Lee

Subject: 5/23/10 Decision on Reconsideration, Wetlands File No. 2008-01253

Status: A PHC is scheduled for February 23, 2011 at 2:00 p.m.

Docket No. 10-12 WtC – Provencal One Family Trust

Subject: 6/4/10 Administrative Order No. 10-013 WD

Status: A PHC is scheduled for February 23, 2011 at 2:00 p.m.

Docket No. 10-14 WtC – Akwa Marina Yacht Club

Subject: 6/11/10 Decision on Reconsideration, Wetlands File No. 2009-01047

Status: A PHC is scheduled for February 23, 2011 at 10:30 a.m.

Docket No. 10-15 WtC – Steven and Mary Pruchansky

Subject: 6/10/10 Decision on Reconsideration, Wetlands File No. 2009-023600

Status: A PHC is scheduled for February 23, 2011 at 9:00 a.m.

Docket No. 10-18 WtC – MRAC LLC and Merchants Plaza, LLC

Subject: Application of NH Dept. of Transportation, Wetlands File No. 2010-00224

Status: A PHC is scheduled for February 23, 2011 at 12:00 p.m.

IV. Previously pending cases.

Docket No. 08-13 WtC - Jeffrey Costura

Subject: 1/25/08 Decision on Reconsideration, Wetlands File No. 2007-01416

Status: This has been settled; expecting withdrawal from appellant.

Docket No. 08-53 WtC - Vintage Trust c/o Enthusiasts, Inc.

Subject: 8/7/08 Decision on Reconsideration Denial, Wetlands File No. 2006-01506

Status: A request for status has been sent. Parties will respond by the March 8, 2011 Council meeting.

Docket No. 08-55 WtC - Tracy Middleton Revocable Trust of 1992

Subject: 9/12/08 Reconsideration Denial, Wetlands File No. 2002-2087

Status: A request for status has been sent. Parties will respond by the March 8, 2011 Council meeting.

Docket No. 09-09 WtC - Christopher and Sally Norton

Subject: 01/09/09 Reconsideration Denial, Wetlands File No. 2008-01265

Status: This has been settled; expecting withdrawal from appellant.

Docket No. 09-20 WtC - Dana Belletete

Subject: 3/26/09 Request for Reconsideration Denial, Wetlands File No. 2009-00366

Status: A request for status will be sent.

Docket No. 09-21 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-041 WD

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete.

Docket No. 09-22 WtC - John Penaskovic

Subject: 4/17/09 Administrative Order, Administrative Order No. 09-040 WD

Recused: Larry Morse

Status: Appeal has been stayed until the agreement of July 1, 2010 is complete.

Docket No. 09-30 WtC – Philips Exeter Academy

Subject: 6/26/09 Decision on Reconsideration for Proposed Parking Area at Main Street School in Exeter. Wetlands Bureau Dredge and Fill Permit #2008-00233

Presiding Officer: Chip Kimball

Action: Council to vote to grant or deny Motion for Reconsideration. This will be considered later in the meeting.

Docket No. 09-36 WtC – Brendan and Dana Keegan

Subject: Administrative Order No. 09-22 WD dated April 6, 2009

Status: A PHC will be scheduled for a date in March.

Docket No. 10-19 WtC – Grouse Point Club

Subject: Decision on Reconsideration Denial, Wetlands File No. 2010-00808

Status: A PHC will be scheduled for a date in March.

Docket No. 10-20 WtC – Robert Pinato

Subject: August 19, 2010 Administrative Order, Administrative Order No. 10-025 WD

Status: A PHC will be scheduled for a date in March.

Docket No. 10-24 WtC – Sunset Ranch Camp, Inc.

Subject: Standard Dredge and Fill Permit, Wetlands File No. 2010-00764

Status: A PHC will need to be scheduled for a date in March. The presiding officer will consider combining this with Docket No. 10-17.

Docket No. 10-23 WtC – Charles and Patricia Sem

Subject: Administrative Order No. 10-033 WD dated September 21, 2010

Status: The Council accepted the appeal at the January 11, 2011 Council meeting. A PHC will be scheduled for a date in March.

V. Misc.

3/31/09 Request for Declaratory Ruling filed by Mr. Goodwin

Councilor Morse to finish.

Council took a break at 10:10 a.m. Returned to meeting at 10:18 a.m. with same attendance.

Docket No. 09-30 WtC – Philips Exeter Academy

A decision was made in October and reconsideration has been requested. Discussion was held.

- *Councilor Henderson made a motion to deny the Motion for Reconsideration and uphold the Wetlands Council's previous decision based on the fact that there was no new information presented that had not been discussed during the initial hearing except for the photos of August 22, 2010 flooding. The additional photos just confirmed the general agreement of all parties that the area floods once a year - which was discussed at the hearing, second by Councilor Thompson. Discussion continued. Those in presence at the original hearing were Councilors: Henderson, Sassan, Kimball, Prescott, Thompson, St. Pierre, and Ballin. Councilor Crosbie attended the original Hearing but was not yet appointed by the Governor and Council. Vote was 5 in favor, 2 against, and one abstention.*

Amy noted that for 09-44 WtC – Thomas and Joan DiPace appeal, the hearing can be scheduled for May 24, 2011.

Docket No. 07-09 WtC – Derry Conservation Commission

Councilor Prescott reviewed the Joint Motion for Clarification and the Appellants' Supplement. It was decided this was a ruling of law so the presiding officer, along with the council's attorney, will need to make a decision.

5. **Old Business** -

6. **New Business** -

7. **Next Meeting** – Next meeting will be Tuesday; March 8, 2011.

8. **Adjournment**

- ***Councilor Henderson made a motion to adjourn, second by Councilor Crosbie. Motion passed unanimously.***

Meeting adjourned at 11:10 a.m.

